

Vincent C. Bruce # J 84086
P.O. Box 7500
Crescent City, Ca. 95532

In Pro Se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VINCENT C. BRUCE,

Plaintiff

v.

EDDIE YLST, Former Warden
G.E. HARRIS, Chief Deputy Warden
P.H. CARRILLO, Associate Warden
R. PADILLA, Corr'l Captain
P.E. TINGEY, Associate Warden
A. GODFREY, Corr'l Captain
D. MARRIOTT, Corr'l Counselor II
M. COZIAHR, Corr'l Lieutenant
L. WASHINGTON JR, Corr'l Officer

All of Salinas Valley State Prison, and

ROBERT AYERS J.R., Warden
J. MC GRATH, Chief Deputy Warden
T. SCHWARTZ, Associate Warden
D. SMITH, Corr'l Captain
RAUL J. DILLARD, Corr'l Captain
GARY H. WISE, Corr'l Lieutenant
M. PILAND, Corr'l Sergeant
K. BURNS, Correction Counselor I
M. JOHNSTON, Corr'l Counselor II

all of Pelican Bay State Prison, and

CAL TERHUNE, Director
S.C. WOHLWEND, Special Agent,
W.R. WILLIAMS, Classif'n Staff Rep.
and

DOES 1 - 10, inclusive

Defendants

No. C99-4492 VRW (PR)

FIRST AMENDED
COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS

I.

JURISDICTION

1. This case is brought pursuant to 42 U.S.C. sections 1983 and 1985 to redress the deprivation under color of state law, of rights secured by the Constitution of the United States. Jurisdiction is based on 28 U.S.C. sections 1331 and 1343. The court also has pendent and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. sections 2201 and 2202. The unlawful acts primarily occurred within this judicial district and the majority of the defendants reside within this district, 28 U.S.C. section 1392(b).

II.

PARTIES

2. Plaintiff Vincent C. Bruce is and was at all times mentioned, herein a prisoner of the State of California, in the custody of the California Department of Corrections (CDC).

3. Defendant Eddie Ylst was the Interim Warden at Salinas Valley State Prison (SVSP) during 1998 and some of the events described herein. Defendant Ylst was legally responsible for the operation of SVSP and the welfare of all inmates therein.

4. Defendant J. Doe - I was the Interim Warden at SVSP during part of 1998 and some of the events described herein. Defendant Doe - I was legally responsible for the operation of SVSP and the welfare of all inmates therein.

5. Defendant G.E. Harris was the Chief Deputy Warden at SVSP in 1998 and the events described herein. Defendant Harris was legally responsible for assisting the Warden at SVSP with the op-

ration of SVSP and the welfare of all inmates therein. Defendant Harris participated in classification reviews of Plaintiff's placement in administrative segregation for alleged gang affiliation.

6. Defendant P.H. Carrillo was an Associate Warden at SVSP during 1998 and some of the events described herein. Defendant Carrillo was legally responsible for assisting the Warden at SVSP with the operation of SVSP and the welfare of all inmates therein. Defendant Carrillo participated in classification reviews of Plaintiff's placement in administrative segregation for alleged gang affiliation.

7. Defendant P.E. Tingey was an Associate Warden at SVSP during 1998 and the events described herein. Defendant Tingey was legally responsible for assisting the Warden at SVSP with the operation of SVSP and the welfare of all inmates therein.

8. Defendant A. Godfrey is a Correctional Officer for CDC, who at all times mentioned herein held the rank of Captain and was assigned to SVSP. Defendant Godfrey participated in classification reviews of Plaintiff's placement in administrative segregation for alleged gang affiliation.

9. Defendant R. Padilla is a Correctional Officer for CDC, who at all times mentioned herein held the rank of Captain was assigned to SVSP. Defendant Padilla participated in an investigation into Plaintiff's retention in administrative segregation.

10. Defendant D. Marriott is a Correctional Counselor for CDC, who at all times mentioned herein held the rank of Correctional Counselor Two, and was assigned to SVSP. Defendant Marriott

participated in classification reviews of Plaintiff's placement in administrative segregation for alleged gang affiliation.

11. Defendant M. Coziahr is a Correctional Officer for CDC, who at all times mentioned herein, held the rank of Lieutenant and was assigned to SVSP. Defendant Coziahr participated in the investigation into Plaintiff's alleged gang affiliation.

12. Defendant L. Washington Jr. is a Correctional Officer for CDC, who at all times mentioned herein, was assigned to SVSP. Defendant Washington participated in the investigation into Plaintiff's alleged gang affiliation.

13. Defendant W.R. Williams is a Classification Staff Representative for CDC, who at all times mentioned herein, was assigned to Sacramento. Williams endorsed the gang associate label of Plaintiff and placement in the SHU.

14. Defendant Robert Ayers Jr. is the Warden of Pelican Bay State Prison (PBSP). He is legally responsible for the operation of PBSP and the welfare of all inmates therein.

15. Defendant J. McGrath is Chief Deputy Warden at PBSP. He is legally responsible for assisting the Warden at PBSP with the operation of PBSP and the welfare of all inmates therein.

16. Defendant T. Schwartz is the Associate Warden at PBSP. She is legally responsible for assisting the Warden with the operation of PBSP and the welfare of all inmates therein.

17. Defendant D. Smith is a Correctional Officer for CDC, who at all times mentioned herein, held the rank of Captain and was assigned to

PBSP.

18. Defendant B.J. O'Neill is a Correctional Officer for CDC, who at all times mentioned herein held the rank of Captain and was assigned to PBSP. Defendant O'Neill participated in classification reviews of the gang associate label placed on Plaintiff.

19. Defendant Raul J. Dillard is a Correctional Officer for CDC, who at all times mentioned herein, held the rank of Captain and was assigned to PBSP. Defendant Dillard participated in a review of Plaintiff's appeal administratively challenging the prison gang associate label.

20. Defendant G.H. Wise is a Correctional Officer for CDC, who at all times mentioned herein held the rank of Lieutenant and was assigned to PBSP. Defendant Wise participated in administrative reviews of the prison gang associate label placed on Plaintiff.

21. Defendant M. Piland is a Correctional Officer for CDC, who at all times mentioned herein, held the rank of Sergeant. Defendant Piland participated in reviews of the prison gang associate label placed on Plaintiff. Defendant Piland is assigned to PBSP.

22. Defendant K. Burns is a Correctional Counselor for CDC, who is assigned to PBSP. Defendant Burns participated in classification reviews of the prison gang associate label placed on Plaintiff.

23. Defendant Maria Johnston is a Correctional Counselor for CDC, who at all times mentioned herein held the rank of Correctional Counselor Two and was assigned to PBSP. She participated in a review of the prison gang

associate label placed on Plaintiff.

24. Defendant Col Terhune is the Director of CDC. He is legally responsible for the overall operation of the Department and each institution under its jurisdiction, including SVSP and PBSP.

25. Defendant S.C. Wohlwend is a Correction Officer for CDC, who at all times mentioned herein, held the rank of Senior Special Agent and was assigned to the CDC office at Sacramento. Defendant Wohlwend confirmed the prison gang associate label of Plaintiff.

26. Each Defendant is sued individually and in his/her official capacity. At all times mentioned herein each Defendant acted under the color of authority.

27. Defendants Does 2-10, are each responsible in some manner for the constitutional violations and damages to Plaintiff alleged herein. The true names and capacities of Defendants Does 2-10 are presently unknown to Plaintiff.

Plaintiff alleges on information and belief, that each of them is responsible in some manner for the constitutional violations and damages to Plaintiff alleged herein. Plaintiff therefore sues Does 2-10 by such fictitious names and will seek leave to amend this complaint to add their true names when they have been ascertained.

28. The true name of J. Doe-1 is unknown to Plaintiff, therefore Plaintiff sues Doe-1 individually and in his/her official capacity by such fictitious name and will seek leave to amend this complaint to add his/her true name when it has been ascertained.

III. FACTS

29. This action arises from the placement and retention of Plaintiff in the SHU on the basis of alleged prison gang association.

30. On November 8, 1995 Plaintiff arrived at North Kern State Prison (NKSP) from the Los Angeles County Jail and was placed in administrative segregation and investigated by NKSP officials for alleged prison gang association. NKSP is under the jurisdiction of CDC.

31. On February 7, 1996 NKSP gang investigators completed their investigation into Plaintiff's gang affiliation, concluding there was insufficient reliable information to identify Plaintiff as a member or associate of any prison gang. Plaintiff was released from segregation the following day.

32. Plaintiff is informed and believes NKSP gang investigators conducted an extensive investigation into Plaintiff's alleged gang affiliation, including repeated contacts with the Los Angeles Sheriff's Department (L.A.S.D.) and reviewing all documents in Plaintiff's central file.

33. In March of 1996 Plaintiff was transferred to Pelican Bay State Prison (PBSD).

34. On April 4, 1996 Plaintiff was placed in administrative segregation by Lieutenant (Lt.) J. B. Williams pending an investigation into Plaintiff's alleged prison gang affiliation. Lt. Williams indicated if there was insufficient information to identify Plaintiff as a prison gang associate or member, he would place a document in

Plaintiff's file detailing that finding, to prevent other prisons from placing Plaintiff in segregation and reinvestigating the same information.

35. On April 24, 1996 Plaintiff attended a classification review chaired by Defendant Schwartz. She indicated that the gang investigation was concluded and Plaintiff had not been found to be affiliated with any prison gang. In response to Plaintiff's expressed concerns over future CDC gang investigations, Defendant Schwartz indicated Lt. Williams had placed a document in Plaintiff's file pointing out the lack of reliable information to identify Plaintiff as a prison gang affiliate. Plaintiff was released from segregation.

36. In August of 1996 Plaintiff was transferred to SVSP, so Plaintiff could be housed closer to his immediate family.

37. On June 12, 1998, at SVSP, Plaintiff was placed in administrative segregation for an alleged rule violation.

38. On June 25, 1998 at SVSP Plaintiff attended a classification review chaired by Defendant Tingey. Plaintiff was assessed a 90 day SHU term for the above-mentioned rule violation. The SHU term was set to expire on July 15, 1998, whereupon Plaintiff would be transferred to another prison closer to home. Defendant Tingey indicated Plaintiff would serve the remaining portion of the SHU term in SVSP segregation.

39. During June of 1998, Plaintiff submitted over twelve written Request For Inter-

views to various SVSP officials, including Defendants Harris, Tingey, Carrillo and Godfrey.

These requests concerned deplorable conditions of confinement existing in administrative segregation at that time. In the Request For Interviews Plaintiff complained about the following human needs Plaintiff and others were being deprived: out-door exercise; clean underclothing; clean blankets and sheets; shoes; writing paper; writing instruments; indigent envelopes and postage; personal hygiene implements; adequate food portions served in a sanitary manner and lack of adequate ventilation in the cells. Additionally, Plaintiff complained of lack of access to legal documents, personal property, canteen, reading material and the law library. These Requests For Interviews were never responded to by SVSP officials.

40. On an afternoon during or about the first week of July 1998, Plaintiff and several other prisoners in administrative segregation requested to see an administrator concerning deprivations occurring in Plaintiff's unit and staff's failure to respond to written grievances and Requests For Interviews. Plaintiff agreed to act as spokesperson and present the other prisoners' grievances to the administrator when he arrived.

41. On the same day described in paragraph 40, and approximately six to eight hours after the other prisoners and Plaintiff requested to speak to an administrator, a facility Lieutenant and Sgt. Middlebrooks spoke to Plaintiff and resolved the grievances presented by Plaintiff. The Lieutenant and Sergeant promised that

no retaliatory action would be taken against the other prisoners or Plaintiff for presenting the grievances in this manner.

42. On July 21, 1998 Plaintiff attended a classification review at SVSP. The classification committee was composed of Defendants Carrillo, Godfrey and Morriott. The Defendants stated that Plaintiff's transfer to another prison was being rescinded and that Plaintiff had been identified as a prison gang member and a validation package was being prepared by the Institutional Gang Investigator (IGI), Defendant Coziähr. The Defendants indicated Plaintiff would be held in administrative segregation pending the outcome of the validation.

43. Plaintiff requests the court take judicial notice of the record and findings of fact and law made by Chief Judge Thelton E. Henderson in *Madrid v. Gomez* No. C 90-3094-TEH.

44. At the July 21, 1998 classification review Plaintiff complained that the state regulations were not being adhered to, nor was Plaintiff provided written notice prior to the decision to retain him in segregation. Plaintiff was interrupted by Defendant Godfrey and was ordered out of the classification room.

45. On July 17, 1998 Defendant Washington concluded Plaintiff was a "Member" of the Black Guerrilla Family prison gang. The defendant's conclusion was based on items that he knew had been rejected as unreliable by other gang investigators.

46. On August 3, 1998 Plaintiff was interviewed by Defendant Washington. During the

interview Defendant Washington made the following statements:

(a) Plaintiff had been identified as a member of the Black Guerrilla Family prison gang by Washington on instructions from Defendant Coziah and other "higher-ups".

(b) The main reason Plaintiff was being validated was Plaintiff's actions in being spokesperson for other prisoner's grievances and complaints during a recent incident in early July 1998.

(c) That other reasons contributing to Plaintiff's validation is Plaintiff's past history of acts of civil disobedience ("protests"), repeated complaints, Plaintiff's subpoena of prison gang members to testify in Plaintiff's criminal trial and a recent citizen's complaint filed by Plaintiff's family members.

(d) That Plaintiff was being validated to make an "example out of" him to discourage similar activities.

(e) That Washington was contacted that very morning by the Warden of SVSP who inquired about Plaintiff's validation.

(f) That the evidence he was relying on was already present in Plaintiff's file and was present during the other IGI reviews in 1996.

47. Plaintiff is informed and believes that Defendant Washington contacted the L.A.S.D. gang unit and learned that the L.A.S.D. had never classified Plaintiff as a prison gang member but the Defendant concealed this information from other prison officials. This information would have completely under-

mined and refuted one of the items being relied on to identify Plaintiff as a prison gang associate.

48. During the August 3, 1998 interview Defendant Washington refused to provide Plaintiff with a summary of evidence being relied on to identify Plaintiff as a prison gang member, or otherwise notify Plaintiff of what evidence was being used against him.

49. On or about July 29, 1998 Plaintiff's family members filed a citizen's complaint with Defendant ~~Vlt~~ complaining of Plaintiff's retention in administrative segregation and the impropriety of the investigation into Plaintiff's alleged prison gang affiliation.

50. On August 6, 1998 Defendant Padilla sent a written response concerning the citizen's complaint to Lonna P. Braxton denying that any due process rights or time constraints had been violated.

51. Defendant Padilla was untruthful with Ms. Braxton and several time constraints and procedural protections had been violated.

52. On or about August 4, 1998 Defendant Marriott denied Plaintiff's request to be appointed an Investigative Employee (I.E.) to gather evidence and interview witnesses in Plaintiff's behalf concerning the retention in segregation for alleged prison gang affiliation. Defendant Marriott stated that any information and evidence provided by Plaintiff would not affect Plaintiff's retention in segregation nor would it affect the outcome of the gang validation.

53. On August 26, 1998 Plaintiff attended

a classification review of his retention in administrative segregation. Defendants Harris, Carrillo, Godfrey and Marriott were on the classification committee. Defendants denied Plaintiff's request for an I.E., Defendant Harris stating there was nothing Plaintiff could present in the way of information that would affect Plaintiff's retention in segregation or alter the outcome of the gang investigation.

54. On August 21, 1998 Defendant Wohlwend validated Plaintiff as an "associate of the Black Guerrilla Family prison gang."

55. The validation package which Defendant Wohlwend reviewed was sent by Defendant Coziahr and contained the following items:

Item #1 - A L.A.S.D. Inmate Special Handling Request dated 8-23-95. The document states in part "CRIP GANG MEMBER / B6F MEMBER".

Item #2 - A Probation Officer Report dated 11-2-95. The report indicates Plaintiff's codefendant is Shaun Garland. Next to his name a CDC official noted that Garland is a validated B6F Member.

Item #3 - A confidential chrono, CDC form 128-B dated 11-9-95, disclosed on a CDC form 1030 allegedly identifies Plaintiff as a "B6F Member" and "Shot-Caller."

Item #4 - A confidential memorandum dated 2-10-95 allegedly identifies Plaintiff as an associate of the Black Guerrilla Family

Item #5 - A confidential memorandum dated 10-11-95 which identifies Plaintiff as associating with and conducting drug transactions with validated gang members and requesting pro.

per. validated gang members to testify in his penalty phase.

56. Defendant Wohlwend found Items #1, #2 and #3 met validation requirements and Items #4 and #5 did not.

57. On September 7, 1998 Defendant Washington provided Plaintiff with a copy of Item #1, one page from Item #2 and a CDC 1030 form disclosing a terse sentence from Item #3. This is the first occasion Plaintiff was notified of the evidence being used against him.

58. Plaintiff contends Item #1 is inherently unreliable as it: (a) fails to include factual information to support its conclusion; (b) is contradicted by L.A.S.D. gang unit records; (c) is hearsay; and (d) contains other false information.

59. Plaintiff contends Item #2 is unreliable as it fails to establish Plaintiff's codefendant Shaun Garland was a current active member of a prison gang at the time of the commitment offense. Nor does it establish that the commitment was gang related and fails to establish that Plaintiff's alleged association with Garland was for the purpose of furthering, promoting or assisting prison gang activity.

60. Plaintiff contends Item #3 is inherently unreliable as it is: (a) based on multiple hearsay; (b) fails to include factual information to support its reliability; (c) is contradicted by other reliable information and; (d) the circumstances surrounding the information reveal its unreliability.

61. None of the information Defendants are

relying on demonstrate that Plaintiff is a current active member of a prison gang, nor does it demonstrate that Plaintiff has knowingly furthered, promoted or assisted in any gang activity on behalf of a prison gang. It also fails to demonstrate that Plaintiff constitutes a threat to the security of the institution.

61. Plaintiff is informed and believes that Defendant Washington discovered evidence during his investigation that undermined, refuted or contradicted the five items he relied on in verifying Plaintiff as a prison gang "member" but refused to document, consider or disclose this evidence.

62. On September 15, 1998, Defendants Harris, Carrillo, Godfrey, and Marriott sat on the classification committee that reviewed Plaintiff's gang validation and retained Plaintiff in the SHU for an indefinite term based on the validation as a BGF associate. This review was a facade in that Defendants refused to allow Plaintiff to present exculpatory evidence, nor would they consider such favorable and exculpatory evidence. Defendants did not independently determine if in fact the items were reliable or Plaintiff was an actual current active member of a prison gang.

63. On October 6, 1998 Defendant Cozi-ahr stated that Plaintiff had been validated as a prison gang associate for "protesting and complaining" about conditions in administrative segregation and if Plaintiff had kept his mouth shut and not done so much complaining he would not have been validated and would be out in general population.

64. Defendant Coziahr refused to consider any evidence or information Plaintiff indicated was available that would undermine the reliability of the items of evidence used to validate Plaintiff.

65. On October 6, 1998 Defendant Washington stated to Plaintiff that he had discovered additional gang evidence that could be used against Plaintiff if Plaintiff continues to make waves.

66. Plaintiff is informed and believes that Defendants Terhune, Ylst, Padilla and J. Doe-I knew of and approved of an unwritten policy and practice of not allowing prisoner's accused of prison gang affiliation to gather and present evidence concerning the validity of the evidence being relied on.

67. Defendant Padilla was responsible for the supervision of the gang investigation unit at SVSP that Defendants Coziahr and Washington were assigned to. Defendant Padilla failed to properly train and supervise Coziahr and Washington. This failure resulted in the retaliatory and malicious misclassification of Plaintiff.

68. On September 30, 1998 Defendant Williams endorsed Plaintiff's validation as a B6F associate and Plaintiff's indefinite confinement in the SHU.

69. On or about October 7, 1998 Plaintiff arrived at PBSP and was placed in the SHU.

70. On October 14, 1998, Plaintiff attended an initial classification review at PBSP. Defendant Smith was the chairperson and refused

to consider evidence or information Plaintiff offered or indicated it was available. The Defendant refused to independently review and or determine if Plaintiff was a current active member of prison gang. Defendant Smith instructed Plaintiff to "debrief" if he wants to be released from the SHU.

71. On February 16, 1998 Plaintiff attended a 120 day classification review. Defendants O'Neill and Burns were on the classification committee. Defendants refused to allow Plaintiff to refute the prison gang association label, nor would the Defendants independently determine if Plaintiff was actually a current active member of a prison gang.

72. In approximately late October or early November 1998, Correctional Counselor Nimrod expressed extreme skepticism about the reliability of Item #1 and forwarded Plaintiff's central file to the IGI to review the reliability of the Items used in Plaintiff's validation. A few days later Counselor Nimrod informed Plaintiff that the IGI upheld the reliability of Item #1 and the other Items.

73. In February 1999, Plaintiff was interviewed by Defendant Wise concerning an administrative appeal filed at SVSP by Plaintiff. The appeal concerned SVSP's failure to provide timely disclosure of evidence used to verify Plaintiff as a prison gang affiliate. Defendant Wise refused to consider and exculpatory or favorable evidence offered by Plaintiff or the procedural violations occurring at SVSP during the verification of Plaintiff as a prison gang affiliate.

74. In February 1999, Defendant Piland interviewed Plaintiff concerning an administrative appeal of Plaintiff's validation as a prison gang associate. Defendant Piland refused to consider available exculpatory and favorable evidence outlined by Plaintiff or consider the impropriety of Plaintiff's validation.

75. On February 25, 1999 Defendant Piland denied Plaintiff's appeal. Piland's review of Plaintiff's appeal was conducted in a rote and perfunctory manner.

76. On February 26, 1999 Defendant Dillard, who is assigned to the Investigative Services Unit at PBSP, agreed with and endorsed Piland's denial of Plaintiff's appeal.

77. On July 16, 1999 Defendant Burns notified Plaintiff that he was scheduled to receive an annual classification review of whether there was a need to retain Plaintiff in segregation. Plaintiff requested an I.E. to gather evidence in his behalf. Defendant Burns assigned himself the position of I.E.

79. On July 19, 1999 Plaintiff requested in writing that Burns gather documents and interview witnesses and take Plaintiff's statement. The requested evidence and information would have refuted or undermined the reliability of the information being relied on to validate Plaintiff and also addressed whether Plaintiff was actually a current active gang member.

80. The purpose of an annual review is to consider whether a SHU occupant should be released from the SHU. The classification committee considers evidence and information concerning the validity of the reasons for a prisoner being placed in the SHU and

whether there is a need to continue such placement in the SHU.

81. On July 29, 1999 Defendant Burns submitted a final investigative report to Plaintiff. Defendant Burns refused to gather any evidence, interview any witnesses and interview Plaintiff.

82. Plaintiff is informed and believes that it is the policy and practice of Defendant Burns to not gather evidence or interview witnesses when assigned as I.E. in annual reviews of gang affiliation segregations. And the Defendant acted in accord with this policy and practice and refused to gather evidence Plaintiff could not because of his confinement in the SHU.

83. Plaintiff is informed and believes that Defendant Schwartz discussed Plaintiff's evidence requests with Defendant Burns and agreed with and endorsed Burns decision to not gather evidence for Plaintiff's annual review.

84. On August 4, 1999 Defendant Ayers, O'Neill and Burns were classification committee members at Plaintiff's annual review. The Defendants refused to grant Plaintiff's requests to: (i) postpone the classification review; (ii) appoint another I.E. to gather evidence for Plaintiff; (iii) to present witnesses at the review; and (iv) notify Plaintiff of the criteria being utilized by Defendants to determine whether he should be retained in the SHU.

85. The Defendants at the annual review also refused to review and consider exculpatory and favorable evidence offered by Plaintiff and also refused to determine if there was a valid basis and need to retain Plaintiff in the SHU.

86. Defendant O'Neill stated at the annual

review that items of evidence from other agencies "did not need to contain factual information." He further stated that other agency's information is "accepted at face value." Defendant O'Neill made these statements in reference to Item #1.

87. Defendant Ayers stated at the annual review of Plaintiff's segregation, that there was nothing that Ayers could do about the state of the evidence being relied on except wait and see what Sacramento says in Plaintiff's administrative appeal of the gang validation.

88. On April 20, 1999 Defendant Johnston denied Plaintiff's administrative appeal of his prison gang validation at the Second Level of Review.

89. Evidence of all Defendants' rote and perfunctory review of Plaintiff's misclassification at IGI, classification and appeal reviews is demonstrated by the paucity of the evidence relied on, the probability of the use of rejected evidence and refusal to consider evidence that undermines the reliability of the Items of evidence.

90. Further evidence of all Defendants' rote and perfunctory review of Plaintiff's misclassification is demonstrated by Defendants' knowledge that none of the Items of Evidence being relied on demonstrate that Plaintiff is a current active member of a prison gang or that Plaintiff has knowingly furthered, promoted or assisted any serious misconduct or illegal activity on behalf of a prison gang.

91. Defendant McGroth has been personally aware since August 6, 1999 that Plaintiff's gang validation was inadequate and unreliable,

review that items of evidence from other agencies "did not need to contain factual information." He further stated that other agency's information is "accepted at face value." Defendant O'Neill made these statements in reference to Item #1.

87. Defendant Ayers stated at the annual review of Plaintiff's segregation, that there was nothing that Ayers could do about the state of the evidence being relied on except wait and see what Sacramento says in Plaintiff's administrative appeal of the gang validation.

88. On April 20, 1999 Defendant Johnston denied Plaintiff's administrative appeal of his prison gang validation at the Second Level of Review.

89. Evidence of all Defendants' rote and perfunctory review of Plaintiff's misclassification at IGI, classification and appeal reviews is demonstrated by the paucity of the evidence relied on, the probability of the use of rejected evidence and refusal to consider evidence that undermines the reliability of the Items of evidence.

90. Further evidence of all Defendants' rote and perfunctory review of Plaintiff's misclassification is demonstrated by Defendants' knowledge that none of the Items of Evidence being relied on demonstrate that Plaintiff is a current active member of a prison gang or that Plaintiff has knowingly furthered, promoted or assisted any serious misconduct or illegal activity on behalf of a prison gang.

91. Defendant McGrath has been personally aware since August 6, 1999 that Plaintiff's gang validation was inadequate and unreliable,

but took no corrective action.

92. All Defendants continue to maintain a scheme of using unreliable, erroneous and false information when reviewing information and imposing SHU terms based on prison gang affiliation, including but not limited to the exploitation of informants and asserting reliability without regard to the realities surrounding the information provided.

93. All Defendants have refused to allow Plaintiff to collect and present exculpatory and favorable evidence to refute the items of evidence being relied on to identify Plaintiff, including evidence establishing Plaintiff is not a current active prison gang member.

94. All Defendants have an unwritten policy and practice of classifying gang affiliation documents as confidential which do not meet the criteria of confidentiality.

95. All Defendants have an unwritten policy and practice of disclosing the least amount of information possible in gang validations to accused gang affiliates.

96. These policies and practices demonstrate the Defendants' deliberate indifference when imposing gang classifications and SHU terms and reviewing those classifications and SHU terms.

97. There is a policy and practice by gang investigators throughout CDC to not document what items of evidence they reject as unreliable or insufficient to identify suspected gang affiliates which can and has resulted in suspected gang affiliates being validated as prison gang affiliates based on previously rejected items of evidence.

98. All Defendants are aware of this policy and practice of not documenting rejected items at the IGI level, and their awareness is further evidence of their deliberate indifference to gang misclassifications including Plaintiff's.

99. Plaintiff vehemently denies being affiliated with a prison gang and has communicated this fact to Defendants.

100. Plaintiff has repeatedly requested a polygraph examination, but Defendants have refused to administer one to Plaintiff concerning whether Plaintiff is actually affiliated with a prison gang.

101. The Defendants actions constitute continued harrassment and retaliation against Plaintiff for legal activities on behalf of others and himself. Defendants acts are retaliatory and are not related to legitimate penological interests.

102. All Defendants intentionally discriminate against prisoners suspected of gang affiliation by failing to uniformly apply gang classification procedures equally throughout CDC despite regulations which require them to do so.

103. All Defendants discriminate against alleged prison gang affiliates, including Plaintiff by utilizing different, less specific and lower standards when reviewing confidential and non-confidential information when assigning alleged prison gang affiliates to segregation than when assigning other similarly situated prisoners to segregation.

104. This disparity in the way Defendants

treat confidential and non-confidential information caused or substantially contributed to Plaintiff's misclassification as a prison gang "associate" and assignment to segregation.

105. Plaintiff was intentionally discriminated against by Defendants, in that Plaintiff was intentionally deprived of procedural safeguards and protections provided to similarly situated prisoners accused of gang affiliation.

106. Plaintiff was deprived of the following procedural safeguards and protections:

(a) not relying on information previously rejected by gang investigators;

(b) written notice of the specific prison gang a prisoner is suspected of being affiliated with;

(c) an opportunity to present his views to the IGI;

(d) a written summary of the evidence being relied on prior to presenting his views to the IGI;

(e) an opportunity to gather and present evidence refuting the validity of the information being relied on and the need to retain Plaintiff in segregation

(f) reliance on some current evidence of actual gang activity;

(g) designation as a current active prison gang member.

107. The above-mentioned safeguards and protections are provided to similarly situated prisoners at various prisons throughout CDC

108. The deprivation of the safeguards and protections caused or substantially contributed to Plaintiff's misclassification and assignment to the SHU.

109. Defendants fail to require gang investigators to consider and document exculpatory and favorable information they discover in their reviews and investigations of suspected gang affiliates.

110. This failure to require consideration and documentation of exculpatory and favorable information and evidence caused or substantially contributed to Plaintiff's misclassification and assignment to the SHU.

111. On August 19, 1999, CDC promulgated twenty-four pages of emergency regulations governing the placement and retention of validated prison gang members and associates in the SHU.

112. The regulations which Plaintiff was validated as a prison gang associate under failed to provide Plaintiff with sufficiently definite notice of proscribed conduct. Nor did those regulations provide sufficiently definite guidelines to prevent arbitrary enforcement by prison officials.

113. Plaintiff has been informed by Defendant Schwartz and Burns that his retention and release from the SHU are governed by the regulations promulgated on August 19, 1999.

114. The newly promulgated regulations are vague in that they fail to provide Plaintiff with sufficiently definite notice of proscribed conduct and fail to provide sufficiently definite guidelines to prevent arbitrary and discriminatory enforcement by prison officials.

115. Defendants provide validated prison gang affiliates who are actually affiliated with a prison gang with an opportunity to gain early release from the SHU through the debriefing pro-

cess.

116. Defendants fail to provide prison gang affiliates who are not actually affiliated with a prison gang but are erroneously validated as such, with an opportunity to gain early release from SHU.

117. Plaintiff is informed and believes that alleged prison gang affiliates who debrief are required to do the following:

(a) admit they are a prison gang member or associate;

(b) provide credible information about the structure, membership and activities of the prison gang;

(c) provide sufficient information to adversely impact the prison gang so the gang will reject the alleged gang affiliate.

118. Plaintiff cannot debrief for the following reasons:

(a) Plaintiff is not a member or an associate of any prison gang, therefore Plaintiff cannot truthfully admit to being one;

(b) Plaintiff has no credible information about the structure, membership and activities of the prison gang;

(c) Plaintiff refuses to falsify information about the prison gang or alleged members in order to "satisfactorily" complete the debriefing process;

(d) Plaintiff refuses to divulge confidences obtained during interviews of prospective witnesses when Plaintiff represented himself in criminal actions, including the commitment offense.

119. Defendants have a history of a consistent pattern of willful, deliberate indifference to the constitutional rights of prisoners.

120. Plaintiff has provided legal assistance to numerous inmates since 1985 until the present and continues to do so.

121. Plaintiff has a history of actively seeking to correct unlawful and detrimental conditions of confinement and Defendants are aware of this history.

122. Plaintiff suffers undue mental anguish and stress as a result of his retention in the SHU on the basis of false and malicious allegations he is a prison gang associate.

123. Plaintiff's mental stress is exacerbated by fear of harassment and retaliation by CDC officials, including Defendants for pursuing legal remedies concerning Plaintiff's improper gang validation and SHU placement.

124. Plaintiff fears Defendants will actively encourage informants to falsely identify Plaintiff as a prison gang affiliate, and engage in other retaliatory acts.

125. Plaintiff's placement and retention in the SHU for an indefinite period of time constitutes a significant and atypical hardship.

126. Plaintiff's confinement in the SHU subjects him to severe restrictions not imposed on inmates in general population, including but not limited to restrictions in the following areas: property, education, vocational, program, recreation, visiting and social contact.

IV

ADMINISTRATIVE REMEDIES

127. Plaintiff has exhausted all available administrative remedies concerning his classification as a prison gang associate and his indefinite confinement in segregation as a result of that misclassification.

128. Plaintiff has filed three separate appeals related to his misclassification as a prison gang associate and retention in segregation.

129. The first appeal (Appeal #1) was filed in July 1998 at SVSP. This appeal was 'lost' by SVSP officials and Plaintiff was not permitted to file a duplicate by SVSP officials. Plaintiff believes Appeal #1 was assigned log number SVSP-D-98-02111.

130. The second appeal (Appeal #2) was filed in August of 1998 at SVSP. This appeal primarily addressed issues occurring before the validation review by L.E.I.U. Appeal #2 was originally assigned log number SVSP D-98-02892, but was later reassigned log number PBSP-D-99-00327.

131. Plaintiff pursued Appeal #2 through all available administrative review levels. This appeal was denied at the informal level in September, 1998, denied at the first level in February 1999, denied at the second level in April 1999 and denied in part at the Director's level in September 1999.

132. The third appeal (Appeal #3) was filed in February 1999 at PBSP. This appeal appealed the validation and indefinite confinement in the SHU. Appeal #3 was assigned log number PBSP D-99-00356.

133. Plaintiff pursued Appeal #3 through all available administrative review levels. This appeal was denied at the informal level in February 1999, denied at the first level in February 1999, denied at the first level in February 1999, denied at the first level in February 1999, denied at the first level in February 1999.

el in February 1999, denied at the second level in April 1999, and denied in part at the Director's level in September 1999.

134. On August 2, 1999 Plaintiff filed a Tort Claim with the California State Board of Control. The claim alleged ongoing injury and damage as a result of Defendants' negligence, deliberate indifference and maliciousness in depriving Plaintiff of constitutional rights and liberties during the gang validation process, classification reviews, appeal procedures and other reviews, including but not limited to refusing to allow Plaintiff to collect and present evidence in his favor and the reliance by the Defendants on unreliable evidence and withholding favorable information.

135. Plaintiff has exhausted his remedies with respect to the gang management regulations promulgated on August 19, 1999 by filing a written comment on the vagueness and overbreadth of the regulations. The written comment was dated October 24, 1999 and true copies were served on the Regulation and Policy Management Branch of CDC and on the Director of CDC, Cal Terhune, prior to a public hearing on the viability and validity of the regulations.

136. Plaintiff fully expects all Defendants to continue with their deliberate indifference to Plaintiff's malicious and inappropriate validation as a B6F associate and confinement to the SHU.

137. This complaint is not presented for any improper purpose, such as harassment or causing annoyance. The allegations and contentions have evidentiary support or will have ev-

identitary support after a reasonable opportunity for discovery and further investigation.

138. Each of the acts committed by Defendants as outlined in paragraphs 1-138 are ongoing and continuing.

IV

LEGAL CLAIMS

FIRST CAUSE OF ACTION

(First Amendment - Jailhouse Lawyer Activities)

139. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

140. Defendants have violated Plaintiff's rights guaranteed by the First Amendment to the U.S. Constitution in that his confinement in the SHU is based wholly or in part upon Plaintiff's legal and legitimate jailhouse lawyer activities related to and in furtherance of providing legal assistance to other prisoners, in that said jailhouse lawyer activities did not consist of and were not in furtherance of any illegal prison gang activity.

SECOND CAUSE OF ACTION

(First Amendment - Right to Petition)

141. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

142. Defendants have further violated Plaintiff's First Amendment rights by basing his confinement in the SHU upon Plaintiff's legal and legitimate activities in petitioning officials for redress of grievances, where such activities did not consist of and were not in furtherance

of any illegal prison gang activity.

THIRD CAUSE OF ACTION

(First Amendment - Right to Association)

143. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

144. Defendants have violated Plaintiff's First Amendment rights by basing his confinement in the SHU wholly or in part upon underground regulations and policies which classify as impermissible association with prison gang members for legal and legitimate activities related to and in furtherance of Plaintiff's self-representation in criminal actions and the preparation and presentation of a defense in those matters, where such activities did not consist of and were not in furtherance of any illegal prison gang activity.

FOURTH CAUSE OF ACTION

(First Amendment - Jailhouse Lawyer Activities)

145. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

146. Defendants have further violated Plaintiff's First Amendment rights by basing his confinement in the SHU wholly or in part upon underground policies and regulations which classify as impermissible, association with prison gang members for legal and legitimate jailhouse lawyer activities related to and in furtherance of providing legal assistance to other prisoners, where such jailhouse lawyer activities did not consist of and were not in furtherance of any illegal prison gang activity.

FIFTH CAUSE OF ACTION

(First Amendment - Retaliation)

147. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

148. SVSP Defendants have violated Plaintiff's First Amendment rights in that his confinement in the SHU constitutes retaliatory action taken against Plaintiff for the exercise of his constitutionally protected right to petition officials for redress of grievances; for the right to associate with other prisoners for the purpose of providing legal assistance to other prisoners and; his right to associate with prisoners related to and in furtherance of Plaintiff's self-representation and the presentation of a defense in those matters, where such activities did not consist of and were not in furtherance of any illegal prison gang activity.

SIXTH CAUSE OF ACTION

(First Amendment - Rights to Free Speech and Association)

149. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

150. Defendants further violate Plaintiff's First Amendment rights by basing his retention in the SHU on newly promulgated regulations which impermissibly infringe upon the free exercise of speech and association where such speech and association does not knowingly further, promote or assist the prison gang in the commission of unlawful acts or acts of serious misconduct.

SEVENTH CAUSE OF ACTION

(State Created Liberty Interest)

151. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

152. Defendants have deprived Plaintiff of his state created liberty interest rights protected by the Fourteenth Amendment to the U.S. Constitution, when Defendants:

(a) Failed to notify Plaintiff by way of CDC 1030 Disclosure Form that confidential information was placed into his file and reviewed (Title 15, California Code of Regulations (CCR), section 3321;

(b) Failed to give Plaintiff employee assistance as he requested (Title 15, CCR 3341);

(c) Failed to give Plaintiff a full and fair hearing in order to present evidence and witnesses and refute the gang validation prior to the imposition of a SHU term. (Title 15, CCR 3339 (b) (2) and (4);

(d) Failed to provide Plaintiff with written notice of the reasons for retaining Plaintiff in segregation prior to the expiration of his SHU term. (Title 15, CCR 3339 (a), (b) (1);

(e) Failed to provide Plaintiff with a copy of the written decision and evidence relied upon at the completion of the hearing. (Title 15, CCR 3339 (b) (5);

(f) Refused to release Plaintiff from segregation although he poses no threat to safety of persons or the security of the institution (Title 15, CCR 3335, 3339 (a) and 3341.5 (c) (3); and

(g) Used unreliable information to retain Plaintiff in the SHU (Title 15, CCR 3321 (b) (1) and CCR 3378 (c) (2).

EIGHTH CAUSE OF ACTION

(Federal Due Process)

153. Plaintiff realleges and incorpor-

ates by reference each allegation of paragraphs 1-139.

154. Plaintiff's indeterminate term in the SHU for alleged prison gang association constitutes a significant and atypical hardship.

155. Plaintiff's confinement in the SHU violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution in that Defendants:

(a) Placed Plaintiff in the SHU on the basis of erroneous, unreliable evidence that does not individually or collectively constitute some evidence of current, active allegiance to a prison gang;

(b) Relied on previously rejected evidence in assigning Plaintiff to the SHU;

(c) Failed to provide reasonable disclosure of exculpatory evidence;

(d) Failed to provide Plaintiff with written notice prior to retaining him in segregation;

(e) Failed to provide Plaintiff with a meaningful, reasonable opportunity to present his views to the official making the determination to place him in segregation;

(f) Failed to provide meaningful classification reviews of Plaintiff's placement in segregation;

(g) Placed Plaintiff in the SHU on the basis of illegal underground regulations which failed to give sufficiently definite notice of proscribed conduct and failed to provide sufficiently definite guidelines to prison officials to prevent arbitrary and discriminatory enforcement.

156. Furthermore, Defendants' reliance on newly promulgated regulations to retain Plaintiff in the SHU violates fundamental principles of due process in that the new regulations fail to pro-

vide sufficiently definite notice of proscribed conduct and fail to provide sufficiently definite guidelines to prevent arbitrary and discriminatory enforcement by prison officials.

NINTH CAUSE OF ACTION
(State Due Process)

157. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

158. State of California operates Salinas Valley State Prison and Pelican Bay State Prison.

1. The placement and retention of Plaintiff in administrative segregation for an indeterminate term violates Article I, section 7 and 15 of the California Constitution in that the segregation violates the due process of law.

TENTH CAUSE OF ACTION
(Violation of Mandatory Duty - State Law)

159. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

160. The State of California operates Salinas Valley State Prison and Pelican Bay State Prison.

161. The placement and retention of Plaintiff in administrative segregation violates California Penal Code Section 2932, which imposes a mandatory duty upon Defendants and each of them to afford due process protections to prisoners placed in segregation. Wherefore Defendants are liable pursuant to California law.

ELEVENTH CAUSE OF ACTION
(Conspiracy)

162. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

163. SVSP Defendants did conspire and agree to deprive Plaintiff of his constitutional rights as alleged herein in violation of 42 U.S.C., section 1983 and 1985.

TWELFTH CAUSE OF ACTION
(Federal Equal Protection)

164. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-139.

165. Defendants have denied Plaintiff equal protection of the law as guaranteed by the Fourteenth Amendment of the U.S. Constitution by doing the following:

(a) discriminating against Plaintiff on the basis of his activities in petitioning prison officials for redress of grievances;

(b) discriminating against Plaintiff on the basis of his jailhouse lawyer activities;

(c) discriminating against Plaintiff by depriving him of protections and safeguards provided to similarly situated prisoners classified as prison gang affiliates

(d) discriminating against Plaintiff on the basis of his activities in representing himself in criminal actions;

(e) discriminating against Plaintiff by depriving him of an opportunity to gain early release from the SHU; and

(f) discriminating against Plaintiff by employing lower standards in determining reliability of information used to confine Plaintiff in segregation than standards used to confine similarly situated prisoners to segregation.

166. Defendants' discrimination against Plaintiff is not rationally justified by penological objectives

nor narrowly tailored to meet such objectives.

THIRTEENTH CAUSE OF ACTION
(State Equal Protection Clause)

167. Plaintiff realleges and incorporates by reference each allegation contained in paragraphs 1-139.

168. CDC regulations and policy require Defendants to uniformly and equally apply gang classification procedures.

169. Defendants have denied Plaintiff equal protection of the law as guaranteed by the California Constitution, Article I, section 7, by intentionally discriminating against him on the basis of his legal activities and depriving Plaintiff of protections, safeguards and opportunities provided to similarly situated prisoners including other alleged gang affiliates.

PRAAYER FOR RELIEF

170. Plaintiff has no plain adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of Defendants unless the court grants the declaratory and injunctive relief which Plaintiff seeks.

WHEREFORE, Plaintiff respectfully prays for the following:

1) A declaratory judgement that the Defendants acts and practices described herein violate Plaintiff's rights.

2) A preliminary and permanent injunction which prohibits and requires that Defendants, their agents, employees and successors:

(a) Cease harassment, retaliation and reprisals for Plaintiff's court litigation, legal assistance to prisoners and petitioning for redress of grievances;

(b) Cease the practice of placing confidential information into Plaintiff's central file without giving Plaintiff notice within 72 hours by use of CDC 1030 Disclosure Form;

(c) Cease the practice of classifying information as confidential which does not fit the criteria for confidentiality;

(d) Cease the practice of disclosing the least amount of information possible in gang validations;

(e) Cease the practice of not documenting which items of evidence are rejected by gang investigators during IGI reviews;

(f) Cease the practice of validating Plaintiff as a prison gang member or associate without giving Plaintiff the opportunity to present his views and marshal evidence in his behalf and without requiring supporting documents used by gang investigators to be made part of the administrative record with copy provided to the inmate prior to the imposition of any SHU terms;

(g) Cease the practice of imposing SHU terms without a finding the alleged gang affiliate is active in the gang and without a finding that he has committed recent unlawful acts or serious acts of misconduct on behalf of the gang.

(h) Cease the practice of imposing SHU terms without providing prisoners the opportunity to obtain employee assistance, present evidence and witnesses and be provided adequate disclosure of evidence being used against them;

(i) Cease the practice of conducting meaningless classification reviews;

(j) Implement policy and practice whereby all validated gang affiliates, including erroneously validated prisoners may obtain early release from the SHU;

(k) Promulgate regulations giving prisoners adequate notice of proscribed conduct to avoid the imposition and/or retention of SHU terms for alleged gang affiliation;

(l) Implement policy and sufficiently specific guidelines for enforcement of gang management policy and regulations;

(m) Cease the scheme of using unreliable, untrue or insufficient information in imposing gang validations and SHU terms;

(n) Cease the practice of not applying gang classification and validation procedures in a uniform and equal procedure;

(o) Implement policy and procedure requiring prison officials to document and disclose exculpatory and favorable evidence; and

(p) Implement policy and procedural due process establishing sufficiently specific criteria to be used in determining reliability of confidential and non-confidential information for all prisoners.

3) Release Plaintiff from the SHU and expunge from his prison file any reference to prison gang association based on information not disclosed in a timely fashion, information previously rejected, information without factual reliability and information based on conduct which was not proscribed.

4) Compensatory damages of \$100.00 a day from July 16, 1998 until Plaintiff's release from segregation from each of the Defendants respon-

sible for violating Plaintiff's rights.

5) Compensatory damages to cover undue mental anguish and stress as a result of segregation.

6) Punitive damages of \$25,000 from each of the SVSP Defendants and \$15,000 from the remaining Defendants.

7) Plaintiff's cost of suit.

8) For cost and reasonable attorney fees pursuant to 42 U.S.C., section 1983.

9) Trial by jury.

10) For further relief that the court deems proper.

Dated: February 22, 2000

Respectfully Submitted,



Vincent C. Bruce

In Pro Se